

UNITED STATES DEPARTMENT OF COMMERCE
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SERIAL NUMBER	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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FITZPATRICK, CELLA, HARPER & SCINTO
270 PARK AVENUE
NEW YORK, NY 10172

EXAMINER

ART UNIT	PAPER NUMBER
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DATE MAILED:

06/28/94

This is a communication from the examiner in charge of your application.
COMMISSIONER OF PATENTS AND TRADEMARKS

☒ This application has been examined

☒ Responsive to communication filed on 2-3-94

☒ This action is made final.

A shortened statutory period for response to this action is set to expire three month(s), _____ days from the date of this letter. Failure to respond within the period for response will cause the application to become abandoned. 35 U.S.C. 133

Part I THE FOLLOWING ATTACHMENT(S) ARE PART OF THIS ACTION:

1. ☐ Notice of References Cited by Examiner, PTO-892. 2. ☐ Notice re Patent Drawing, PTO-948.
3. ☒ Notice of Art Cited by Applicant, PTO-1449. 4. ☐ Notice of Informal Patent Application, Form PTO-152.
5. ☐ Information on How to Effect Drawing Changes, PTO-1474. 6. ☐ _____

Part II SUMMARY OF ACTION

1. ☒ Claims 1-155 are pending in the application.
- Of the above, claims 138-154 are withdrawn from consideration.
2. ☐ Claims 1-66, 96 have been cancelled.
3. ☐ Claims _____ are allowed.
4. ☒ Claims 67-98, 97-132, 155 are rejected.
5. ☐ Claims _____ are objected to.
6. ☐ Claims _____ are subject to restriction or election requirement.
7. ☐ This application has been filed with informal drawings under 37 C.F.R. 1.85 which are acceptable for examination purposes.
8. ☐ Formal drawings are required in response to this Office action.
9. ☐ The corrected or substitute drawings have been received on _____. Under 37 C.F.R. 1.84 these drawings are ☐ acceptable. ☐ not acceptable (see explanation or Notice re Patent Drawing, PTO-948).
10. ☐ The proposed additional or substitute sheet(s) of drawings, filed on _____ has (have) been ☐ approved by the examiner. ☐ disapproved by the examiner (see explanation).
11. ☐ The proposed drawing correction, filed on _____, has been ☐ approved. ☐ disapproved (see explanation).
12. ☐ Acknowledgment is made of the claim for priority under U.S.C. 119. The certified copy has ☐ been received ☐ not been received ☐ been filed in parent application, serial no. _____; filed on _____.
13. ☐ Since this application appears to be in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11; 453 O.G. 213.
14. ☐ Other _____

EXAMINER'S ACTION

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1. In response to item 2b. in the papers filed by applicants on February 3, 1994, the examiner contacted Penina Wollman, applicant's representative, on June 6, 1994 to remind applicants of their intentions to file a preliminary amendment. On June 22, 1994, the examiner again contacted applicant's representative questioning whether a preliminary amendment has been submitted. Applicant's representative indicated that no such amendment has been made. As a result of this inquiry, the following examiner's action is applied.

2. The drawings are objected to under 37 C.F.R. § 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the phosphor within the face plate as claimed in claims 67 and 155 must be shown or the feature cancelled from the claim. No new matter should be entered.

3. Claims ~~67-155~~^{67-95, 97-132, and 155} are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

4. In claims 67 and 155 the phrase "a faceplate, an electron emitting device,..." is unclear. It appears the phrase "a faceplate" should be provided on a separate line in order to distinguish the face plate from the electron emitting device.

5. Claims 94, 95, and 97-132 are incomplete for failing to suggest essential elements and necessary structural cooperative

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relationship of these elements, thus rendering the claims confusing and unclear and raises the question of operability. As claimed, there is no structural relationship between the phosphor and the electron emitting device (see MPEP 706.03(f)). Where, with respect to the display device, are these elements located? Also, without any structural relationship claimed between these elements, it is not understood how the emitted electrons can stimulate the phosphors.

6. In claims 118, 119, and 124, the phrases "said semiconductor layer" and "the semiconductor layer" lack antecedent basis. Only a semiconductor has been established in claim 117.

7. The following is a quotation of the first paragraph of 35 U.S.C. § 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

The specification is objected to under 35 U.S.C. § 112, first paragraph, as the specification, as originally filed, does not provide support for the invention as is now claimed.

8. The specification indicates at the insertion on page 55 after line 4 (lines 14-19 of insertion) the fluorescent members (note: not phosphor as claimed) are at the inner side of the

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faceplate, not within the faceplate as claimed in claims 67 and 155.

9. Claims 67-93 and 155 are rejected under 35 U.S.C. § 112, first paragraph, for the reasons set forth in the objection to the specification.

MDA 10. Claims ^{67-93, 97-99}~~67-99~~, 101-107, and 109-116 are rejected under the ₄₋₂₃₋₉₄ judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-38 and 40-49 of U.S. Patent No. 5,066,883 in view of Klopfer et al.

11. Patent no. 5,066,883 claims the electron emitting device as claimed in the present application. The only difference is in regards to the electron emitting device being in a display device with a phosphor. However, it is well known in the display device art to use an electron emitting device in a display device with phosphor as evidenced by Klopfer et al. (see column 3 lines 42 - column 4 line 10).

12. It would have been obvious to one of ordinary skill in the art to provide the electron emitting device claimed in U.S. patent 5,066,883 in a display device with phosphor as evidenced by Klopfer et al because Klopfer et al teaches the well known concept of providing electron emitting devices in a display device with phosphor.

The obviousness-type double patenting rejection is a judicially established doctrine based upon public policy and is primarily intended to prevent prolongation of the patent term by prohibiting claims in a second patent not patentably distinct

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from claims in a first patent. *In re Vogel*, 164 USPQ 619 (CCPA 1970). A timely filed terminal disclaimer in compliance with 37 C.F.R. § 1.321(b) would overcome an actual or provisional rejection on this ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 C.F.R. § 1.78(d).

13. Claims 100, 108, 117-132, and 155 would be allowable if rewritten to overcome the rejection under 35 U.S.C. § 112 and to include all of the limitations of the base claim and any intervening claims.

14. This is a continuation of applicant's earlier application S.N. 07/705,720. All claims are drawn to the same invention claimed in the earlier application and could have been finally rejected on the grounds or art of record in the next Office action if they had been entered in the earlier application. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action in this case. See M.P.E.P. § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 C.F.R. § 1.136(a).

A SHORTENED STATUTORY PERIOD FOR RESPONSE TO THIS FINAL ACTION IS SET TO EXPIRE THREE MONTHS FROM THE DATE OF THIS ACTION. IN THE EVENT A FIRST RESPONSE IS FILED WITHIN TWO MONTHS OF THE MAILING DATE OF THIS FINAL ACTION AND THE ADVISORY ACTION IS NOT MAILED UNTIL AFTER THE END OF THE THREE-MONTH SHORTENED STATUTORY PERIOD, THEN THE SHORTENED STATUTORY PERIOD WILL EXPIRE ON THE DATE THE ADVISORY ACTION IS MAILED, AND ANY EXTENSION FEE PURSUANT TO 37 C.F.R. § 1.136(a) WILL BE CALCULATED FROM THE MAILING DATE OF THE ADVISORY ACTION. IN NO EVENT WILL THE STATUTORY PERIOD FOR RESPONSE EXPIRE LATER THAN SIX MONTHS FROM THE DATE OF THIS FINAL ACTION.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Horabik whose telephone number is (703) 305-4812.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 305-4900.

Michael Horabik
June 23, 1994

A handwritten signature in cursive script, appearing to read "Michael Horabik".

Michael Horabik
Patent Examiner
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